

## Chapter III – Disclosure Issue

DATE 1/20/09

BILL NO. SB 189

**Consumer Protection Office**

Two state laws related to the Office of Consumer Protection (OCP) (sections 30-14-143, MCA, and section 30-14-226, MCA) have identical language that state "All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund." Nothing in either law describes when or how often a transfer to the General Fund should occur or a definition of excess funds.

Since the OCP moved to the department at the beginning of fiscal year 2006, the state special revenue account balance has grown due mainly to increased settlement funds received. The ending fund balance recorded on the accounting records for the account are as follows:

June 30, 2006	\$420,012
June 30, 2007	\$1,859,455
June 30, 2008	\$2,367,280

A strict interpretation of these laws is that any revenue received that exceeds the operating costs of the office at the end of each state fiscal year should be transferred to the General Fund. Under that scenario, approximately \$2.3 million would have been transferred to the General Fund for fiscal years 2006 through 2008. This interpretation would not leave the office with any cash to pay for operating costs, so the department would have to request loans each year to pay operating expenses until sufficient revenue was received.

However, the department has not made any transfers to the General Fund in the three fiscal years it has had the office. Department personnel stated they are taking a very liberal interpretation of the law. In some documentation we reviewed, department officials indicated they would like to have a two-year operating budget reserve of \$1.3 million in the OCP fund that would provide the office operating stability in the event settlement dollars decline. Under this scenario, excess funds of \$1,067,280 should have been transferred to the General Fund for the year's fiscal years 2006 through 2008.

Since state law does not provide any requirements on the timing of the transfer to the General Fund or what is considered excess, we make no recommendations to the department at this time. We are disclosing this issue for informational purposes only.